22 April 2026

Ms Leah Sciacca
Senior Executive Leader
Financial Advice and Investment Management
Australian Securities and Investments Commission
Level 5/100 Market St
Sydney NSW 2000

via email: rri.consultation@asic.gov.au

Dear Ms Sciacca

RE: Consultation Paper 388 – Net tangible assets requirements for responsible entities

The Financial Services Council (**FSC**) welcomes the opportunity to provide a submission to the Australian Securities and Investments Commission's (**ASIC's**) consultation on net tangible assets (**NTA**) requirements for responsible *entities* (**CP388**).

The FSC recognises that ASIC's review of the NTA requirements for responsible entities is timely in light of the Shield and First Guardian matters, and recognises the importance of ensuring that all parts of the regulatory framework that touch on managed investment schemes and their distribution remain fit-for-purpose.

Given the thresholds have not been updated since 2013, there is a clear case for recalibration to reflect both the effect of inflation and changes in the scale and operating environment of the managed investment scheme (**MIS**) sector.

The FSC considers that the primary purpose of the NTA framework is to ensure that responsible entities are entities of substance, demonstrating a clear and ongoing commitment of capital to their business. In this sense, the NTA requirement operates as a baseline safeguard, ensuring that only appropriately resourced entities are entrusted with managing client assets. It is not intended to operate as a prudential capital regime or to address risks more appropriately managed through governance, supervision and enforcement.

In this context, the FSC supports a targeted and proportionate recalibration of NTA thresholds, particularly at the lower end of the market. This will strengthen baseline standards and reinforce expectations that responsible entities are appropriately resourced, without introducing unnecessary cost, complexity or barriers to entry.

The FSC emphasises that the NTA framework should remain simple, clearly drafted and operationally workable. Even under the current settings, NTA requirements can be challenging to interpret and apply in practice. Introducing additional complexity, including frequent adjustments or variable requirements, risks increasing compliance burden and the likelihood of inadvertent non-compliance. Maintaining simplicity and clarity should therefore be a key

Financial Services Council Ltd
Suite 30.01, Level 30, 9 Castlereagh Street
Sydney NSW 2000

E. info@fsc.org.au
W. fsc.org.au
ABN 82 080 744 163

objective of any reform.

The FSC also considers it important that the framework avoids duplication or layering of capital requirements. Many responsible entities already hold capital above minimum thresholds, including through revenue-based requirements, and additional settings should not overstate underlying risk or constrain the efficient use of capital. This is particularly relevant where entities perform multiple regulated functions.

The FSC also notes the increasing scale and importance of adjacent investment structures, including managed discretionary accounts (**MDAs**), and the need to ensure that financial resource requirements are applied in a consistent and proportionate manner across comparable activities, taking into account differences in business models and risk profiles.

The FSC therefore considers that reforms should focus on:

- implementing targeted recalibration of baseline thresholds, rather than broad increases;
- adopting periodic review and adjustment mechanisms (for example, every 3–5 years), rather than ongoing indexation;
- ensuring requirements remain proportionate to the role performed and risks assumed;
- avoiding duplication or layering of capital requirements, including where entities perform multiple regulated functions;
- refining the interaction between NTA and liquidity requirements to avoid compounding capital constraints; and
- exploring targeted approaches in limited circumstances where there is a clear combination of factors indicating elevated risk, without introducing a prescriptive or complex risk-based capital framework.

The FSC also considers that there would be value in providing greater clarity on the purpose and practical application of the NTA requirement. While the Consultation Paper refers to NTA as supporting outcomes such as meeting operating costs, facilitating an orderly transition, or funding a wind-up, the current framework limits the extent to which NTA can be utilised in practice without triggering a breach of licence conditions. This reinforces that NTA is not a readily deployable financial buffer, but rather a requirement to demonstrate financial substance. Clearer guidance on the permitted use of NTA would assist responsible entities in understanding the role of the requirement and reduce the risk of misinterpretation.

Finally, any changes should be supported by appropriate transition periods, recognising that increases in NTA requirements may require capital to be raised, funding arrangements to be reviewed, and internal governance processes to be followed. A longer implementation timeframe will support orderly transition and reduce the risk of unintended disruption.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 130 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing more than $4 trillion on behalf of over 16.9 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

Summary of Recommendations

1. ASIC to implement a targeted and proportionate increase to NTA thresholds, to reflect the need for REs to be entities of substance;
2. ASIC to provide clearer guidance on the purpose and permitted use of NTA, including the circumstances in which it may be utilised and the legal constraints on its use, to improve clarity and reduce compliance risk;
3. ASIC to consider whether threshold adjustments can be informed by measures that better reflect MIS sector growth, while maintaining simplicity and minimising ongoing compliance burden;
4. ASIC to adopt periodic review and adjustment of NTA thresholds (e.g. every 3–5 years), informed by CPI or other benchmarks, rather than ongoing indexation;
5. ASIC to adopt a broad-based increase to the minimum concessional NTA threshold of up to $1 million;
6. ASIC to maintain a single, responsible entity-level minimum threshold and not introduce a per scheme operated approach;
7. ASIC to apply a modest and proportionate uplift to the $5 million cap, calibrated to reflect changes in the scale and operating environment of the MIS sector;
8. ASIC to retain the linkage between NTA and liquidity requirements, and provide greater flexibility and clarity on the types of assets that may qualify as liquid, to better align the framework with operational needs;
9. ASIC to maintain a linkage between liquidity requirements and NTA, and provide greater flexibility in the composition of liquid assets, including consideration of a tiered approach that allows a broader range of safe and liquid assets to satisfy the requirement;
10. ASIC to provide a minimum 24-month transition period for any changes to the NTA and liquidity requirements, to support orderly implementation and reduce the risk of unintended disruption;

11. ASIC to consider whether a targeted approach to the application of NTA requirements could be used in limited circumstances where there is a clear combination of factors indicating elevated risk, while maintaining a simple and proportionate baseline framework;
12. ASIC to ensure that any changes to the NTA framework are supported by effective supervisory, governance and enforcement frameworks, rather than relying solely on increases to capital requirements;
13. ASIC retain the concessional NTA framework where scheme assets are held by an independent custodian;
14. ASIC to ensure that where an entity performs multiple regulated functions, NTA requirements are applied in a manner that does not duplicate or layer capital obligations and allows the same capital to satisfy multiple requirements where appropriate; and
15. ASIC to undertake further consultation with industry considering the appropriate settings to deliver a calibrated, appropriate NTA requirement as a baseline financial buffer for MDA providers.

Options for increasing the NTA requirement for responsible entities

Option 1: Increase in line with CPI

B1Q1 Please provide your feedback on this option, including reasons in support of your views.

The FSC supports a measured and proportionate increase to the existing NTA thresholds.

The current thresholds have not been updated since 2013 and an uplift in line with CPI is appropriate to ensure that the framework continues to meet its intended purpose, namely to ensure that responsible entities have sufficient financial resources to be appropriate participants in an industry dealing with other people's money. The FSC considers it appropriate to impose a barrier to entry in the industry where a fund operator or custodian is not an entity of substance.

CP 388 also mentions possible policy reasons for the level of NTA as including meeting ongoing or unexpected costs or expenses, or costs of transition. However, the FSC notes that under the rules as currently framed in ASIC Instruments *2023/647* and *2023/648*, if funds that are set aside as part of the minimum NTA were applied for those purposes, the RE would immediately be in breach of its licence conditions and is likely to have given rise to a reportable situation.

Accordingly, the FSC submits that the NTA requirements should be framed to address the policy reason for applying the requirement, namely to ensure that REs (and other asset holders) are entities of substance that have shown a commitment to their business through the injection of capital.

RECOMMENDATION 1

ASIC to implement a targeted and proportionate increase to NTA thresholds, to reflect the need for REs to be entities of substance.

The FSC also considers that there would be value in providing greater clarity on the purpose and practical application of the NTA requirement. While the Consultation Paper refers to NTA as supporting outcomes such as meeting operating costs or facilitating an orderly transition or wind-up, the current framework limits the extent to which NTA can be utilised in practice without triggering a breach. Providing clearer guidance, including restating the relevant legal constraints and the limited circumstances in which NTA may be drawn upon, would assist responsible entities in understanding the role of the requirement and reduce the risk of misinterpretation.

RECOMMENDATION 2

ASIC to provide clearer guidance on the purpose and permitted use of NTA, including the circumstances in which it may be utilised and the legal constraints on its use, to improve clarity and reduce compliance risk.

B1Q2 Do you agree that applying a CPI-linked increase to the financial thresholds specified in the NTA requirement is appropriate to support the objectives of the NTA requirement? If not, why not?
B1Q3 Are there alternative measures to CPI that you consider more appropriate for this purpose? Please provide details.

CPI provides a simple reference point for updating thresholds, but it does not necessarily reflect changes in the MIS sector, including growth in funds under management, operating scale or business complexity.

In many cases, NTA requirements already increase with business size, particularly where capital is linked to revenue. Additional CPI-based adjustments may therefore be unnecessary for some business models.

Applying CPI on an ongoing basis may also introduce practical compliance burden, requiring responsible entities to monitor, recalculate and update their capital positions as thresholds change incrementally over time.

There is merit in considering whether adjustments could be informed by sector-relevant measures, while maintaining a simple and workable framework and avoiding duplication with existing scaling mechanisms.

RECOMMENDATION 3

ASIC to consider whether threshold adjustments can be informed by measures that better reflect MIS sector growth, while maintaining simplicity and minimising ongoing compliance burden.

B1Q5 Would it be appropriate for ASIC to introduce an ongoing indexation mechanism (e.g. periodic CPI adjustment) for increasing the financial thresholds in the NTA requirement? Why or why not?

The FSC supports the introduction of an ongoing mechanism to ensure that NTA thresholds remain fit-for-purpose over time.

A rules-based indexation approach would provide certainty and predictability for industry participants and reduce the need for periodic regulatory intervention. If CPI is adopted, it would be desirable for adjustment to occur at periods longer than a year, for example at least every three to five years so that compliance systems are not constantly having to be updated.

RECOMMENDATION 4

ASIC to adopt periodic review and adjustment of NTA thresholds (e.g. every 3–5 years), informed by CPI or other benchmarks, rather than ongoing indexation.

B1Q6 What impact will this proposal have on competition?

A targeted increase to NTA thresholds, implemented in a proportionate manner, is unlikely to have a material impact on competition at the level of the larger RE companies, but if the levels were increased excessively, could force medium sized business out of the industry, reducing competition. Assuming current settings continue, an increase in NTA requires a capital injection into the RE company or an increase in an eligible undertaking from a bank, both of which take time and increase costs in the business.

Approaches that are overly complex or that result in sharp increases in capital requirements could have unintended consequences, including raising barriers to entry or constraining investment in business operations such as IT or compliance.

As with other elements of the consultation, the cumulative impact of reforms should be carefully considered.

Option 2: Increase the $150,000 minimum under the concessional NTA requirement

B2Q1 Please provide your feedback on this option, including reasons in support of your views.

The FSC supports consideration of an increase to the minimum NTA requirement under the concessional framework.

The current $150,000 minimum threshold has not been updated for a significant period and it would be consistent with the recommendations above to increase it to a level approximately representing the growth in CPI since 2013.

Recent scheme failures have highlighted the importance of ensuring that responsible entities are appropriately resourced to operate schemes, manage risks and respond to emerging issues.

Increasing the minimum threshold would reinforce expectations that responsible entities are entities of substance, with the capability to meet ongoing obligations and support investor outcomes. This is particularly relevant at the lower end of the market, where a higher baseline requirement can help mitigate risks associated with under-resourced operators, without imposing unnecessary burden on well-established entities.

At the same time, any increase should remain proportionate and targeted, recognising the diversity of business models across the sector and the role of the concessional framework where assets are held by an external custodian. The objective should be to strengthen the baseline of the regime, rather than introduce settings that operate as a prudential capital buffer or create unreasonable barriers to entry.

B2Q2 Do you prefer proposal B2(a) or B2(b)? Please provide reasons.
B2Q3 If we adopt proposal B2(a), what should the fixed amount be? What is the basis for this?
B2Q4 Do you agree that this proposal is appropriate to support the objectives of the NTA requirement? If not, why not?

The FSC supports proposal B2(a), which involves increasing the fixed minimum NTA threshold, and does not support proposal B2(b), to have a "per scheme operated" requirement.

A fixed minimum threshold provides a clear, simple and predictable requirement, consistent with the purpose of ensuring responsible entities are entities of substance.

The FSC does not support a "per scheme operated" approach. Responsible entities typically operate multiple schemes using shared infrastructure, personnel, systems and governance frameworks. A per scheme requirement would not reflect how businesses operate in practice and would risk overstating the level of financial resources required. The test of 0.5% of the average value of fund assets (up to $5 million) already serves as the metric reflecting the size of the RE's business, and it is not necessary to also require $150,000 per scheme to be set aside as NTA.

A per scheme approach may also create unintended distortions, including:

- disproportionately impacting business models that operate multiple schemes;
- discouraging product innovation or the establishment of new schemes; and
- introducing additional complexity without a corresponding regulatory benefit.

The FSC supports a higher minimum threshold of up to $1 million.

This level represents a meaningful uplift from current settings and appropriately strengthens the baseline requirement. It provides a clear signal that responsible entities are expected to maintain a minimum level of financial substance, while remaining proportionate and workable across a range of business models.

Importantly, this approach avoids duplication with existing scaling mechanisms within the NTA framework, including revenue-based tests, which already increase capital requirements for larger or more complex businesses.

More broadly, increasing the minimum threshold in this way is appropriate to support the objectives of the NTA framework, provided it remains focused on baseline capability and avoids introducing unnecessary complexity or cumulative capital requirements.

RECOMMENDATION 5

ASIC to adopt a broad-based increase to the minimum concessional NTA threshold of up to $1 million.

RECOMMENDATION 6

ASIC to maintain a single, responsible entity-level minimum threshold and not introduce a per scheme operated approach.

B2Q6 What effect will this proposal have on competition?

A targeted increase to the minimum concessional NTA threshold is unlikely to have a material impact on competition if calibrated appropriately.

A $1 million threshold represents a proportionate uplift that supports confidence in the regime while remaining accessible for new entrants.

However, more significant increases, or the introduction of additional requirements, could raise barriers to entry and reduce competition. The overall calibration of reforms will therefore be important.

Option 3: Increase the $5 million cap under the concessional NTA requirement

B3Q1 Please provide your feedback on this option, including reasons in support of your views.
B3Q2 If we adopt this proposal, what do you think the new cap should be? What is the basis for this?
B3Q3 Do you agree that this proposal is appropriate to support the objectives of the NTA requirement? If not, why not?

The FSC considers that any adjustment to the $5 million cap should be modest and proportionate, consistent with the approach outlined under Option 1.

The cap has not been updated for a significant period and no longer reflects the current operating environment. A limited uplift may therefore be appropriate to ensure it remains fit-for-purpose.

However, the FSC does not support a material increase to the cap. The NTA framework is intended to support baseline operational capability, not to operate as a prudential capital requirement. Increasing the cap beyond a modest recalibration would impose higher capital requirements on larger responsible entities without a clear link to the risks the framework is designed to address.

It is also important to consider how the cap interacts with existing revenue-based requirements, which already scale capital obligations for larger entities. Any adjustment should avoid unintended increases in overall capital requirements through cumulative or overlapping tests.

Consistent with Option 1, there may be merit in aligning adjustments to changes in the scale and operating environment of the MIS sector, provided this can be implemented in a simple and workable manner.

RECOMMENDATION 7

ASIC to apply a modest and proportionate uplift to the $5 million cap, calibrated to reflect changes in the scale and operating environment of the MIS sector.

Appropriateness of the liquidity component

B4Q1 Do you consider the cash or cash equivalents and liquid assets requirements imposed on responsible entities remain appropriate? Please provide specific details and reasons.

The FSC considers that the liquidity framework plays an important role in ensuring that responsible entities have access to sufficient liquid resources to meet short-term obligations and support the ongoing operation of schemes.

However, there is scope to refine the calibration of the requirement to better align with its intended purpose.

In particular, the requirement to hold cash and cash equivalent assets equal to 50% of the NTA requirement may be more conservative than necessary. While it is important that responsible entities maintain the NTA in a form that could be accessed in a stress scenario, the current settings may be overly restrictive in terms of the types of assets that qualify as liquid .

A more proportionate approach would provide greater flexibility and clearer guidance on the composition of liquid assets, allowing a broader range of appropriately liquid instruments to satisfy the requirement, while still ensuring that funds can be accessed when required.

A more calibrated approach would ensure that liquidity requirements are appropriate for their purpose, without imposing unnecessary constraints.

RECOMMENDATION 8

ASIC to retain the linkage between NTA and liquidity requirements, and provide greater flexibility and clarity on the types of assets that may qualify as liquid, to better align the framework with operational needs.

B4Q2 If we adopt Option 1 (proposal B1), should we increase the cash or cash equivalents minimum requirement (currently, $150,000) to reflect cumulative CPI growth since 2013?
B4Q3 If we adopt Option 2 (proposal B2) or Option 3 (proposal B3), should we make any changes to the cash or cash equivalents or liquid assets requirements? Please provide specific details and reasons.

The FSC considers that any increase in NTA thresholds should be accompanied by a review of the liquidity settings, rather than automatically flowing through on a one-for-one basis.

The current framework creates a direct linkage between NTA and liquidity requirements, meaning that increases in NTA thresholds can have a compounding effect on the amount of capital required to be held in liquid form.

Where NTA thresholds are increased, it is appropriate to consider whether the existing liquidity calibration remains suitable, to ensure that the overall framework continues to be proportionate and appropriately targeted.

B4Q4 Should we continue to calculate the cash or cash equivalents and liquid assets requirements as a proportion of the NTA the responsible entity is required to hold, or should we use an alternative formula or approach? Please provide specific details and reasons.

The FSC supports retaining a linkage between liquidity requirements and NTA, as this provides a clear and consistent framework.

However, there is merit in revisiting how this linkage is calibrated. A more proportionate approach could include:

- reducing the proportion of NTA required to be held in cash or cash equivalent assets; and/or
- introducing a structured or tiered approach to the composition of liquid assets, where a lower proportion is required to be held in cash or cash equivalents, with the remainder able to be satisfied by other appropriately safe and liquid assets, with eligibility calibrated based on relative liquidity and risk.

This would maintain a clear and enforceable liquidity standard, while allowing for greater flexibility in how capital is managed within the business and ensuring that the requirement better reflects the range of assets that can be accessed in a stress scenario.

RECOMMENDATION 9

ASIC to maintain a linkage between liquidity requirements and NTA, and provide greater flexibility in the composition of liquid assets, including consideration of a tiered approach that allows a broader range of safe and liquid assets to satisfy the requirement.

Transition period to help responsible entities comply with any increased requirement

B5Q1 Do you agree that we should provide a transition period if we decide to adopt one or more of proposals B1–B4?

B5Q2 Do you agree with the transition period being six months? If not, why not?

The FSC supports the introduction of a transition period to allow responsible entities to comply with any changes to the NTA and associated liquidity requirements.

A transition period is important to ensure that changes can be implemented in an orderly and controlled manner, particularly where adjustments to capital structures, governance processes and internal policies are required.

While a six-month transition period may be workable in some cases, it is likely to be challenging for a number of responsible entities, particularly where additional capital needs to be raised, funding arrangements reviewed, or internal approvals, including Board approvals, are required.

A longer transition period would provide greater certainty and reduce the risk of unintended disruption, while still supporting timely implementation of the reforms.

The appropriate length of the transition period should also take into account the cumulative impact of changes across the framework, including NTA and liquidity settings.

RECOMMENDATION 10

ASIC to provide a minimum 24-month transition period for any changes to the NTA and liquidity requirements, to support orderly implementation and reduce the risk of unintended disruption.

Alternative approaches

B6Q1 Do you consider that there are alternative approaches to increasing the NTA requirement that are preferable? Please provide details.

The FSC considers there may be merit in exploring more targeted approaches to the application of NTA requirements, as an alternative to broad-based increases.

The primary purpose of the NTA framework is to ensure that responsible entities are entities of substance, rather than to operate as a dynamic or prudential capital regime. Introducing a generalised risk-based capital framework would likely increase complexity, reduce clarity and create additional compliance burden, particularly where requirements become more variable or difficult to interpret.

In this context, ASIC could consider whether there is scope for targeted application of higher requirements in limited circumstances, where there is a combination of factors that may warrant closer consideration. This could include, for example:

- responsible entities with limited operating history, particularly where operating models or structures are more complex;
- responsible entities with a history of material breaches or supervisory concerns; or
- structures involving higher levels of complexity, illiquidity or leverage.

Any such approach should remain principles-based, transparent and applied sparingly, and should not introduce a prescriptive or formulaic framework. This would allow ASIC to focus on areas of potential risk without adding unnecessary complexity or duplication with existing supervisory tools.

RECOMMENDATION 11

ASIC to consider whether a targeted approach to the application of NTA requirements could be used in limited circumstances where there is a clear combination of factors indicating elevated risk, while maintaining a simple and proportionate baseline framework.

B6Q2 Other than the objectives described in paragraph 6, are there other factors that we should consider when setting the NTA requirement for responsible entities (noting that the focus of the requirement is on ensuring responsible entities have adequate financial resources under s912A(1)(d) of the Corporations Act)?

Section 912A(1)(d) requires a licensee to “have available” adequate financial resources.

Amounts set aside as NTA are not "available" to fund the day to day operations of the RE. In that sense, increasing NTA requirements could reduce the amount a business is able to have in reserve for the purposes of section 912A(1)(d) and is an additional reason not to make the increase in thresholds excessive. The FSC considers that capital requirements should be viewed as one element of a broader regulatory framework, which includes governance, risk management and supervisory oversight.

Recent scheme failures have demonstrated that governance, conduct and oversight are the primary drivers of poor outcomes, rather than insufficient minimum capital.

As such, increasing NTA requirements alone is unlikely to address these issues. A more effective approach is to ensure that financial requirements operate alongside:

- strong governance and accountability frameworks;
- effective risk management and compliance systems; and
- targeted supervisory and enforcement activity.

This reinforces the importance of ensuring that any changes to the NTA framework remain simple, proportionate and aligned to their intended purpose, rather than attempting to address risks more appropriately managed through other regulatory settings.

RECOMMENDATION 12

ASIC to ensure that any changes to the NTA framework are supported by effective supervisory, governance and enforcement frameworks, rather than relying solely on increases to capital requirements.

Appropriateness of the concessional NTA requirement for responsible entities

C1Q1 Do you consider that responsible entities should continue to be subject to a concessional NTA requirement if they meet the requirements relating to custody or fund assets described in paragraphs 29–31? Please give reasons.

The FSC supports the continued application of a concessional NTA requirement where scheme assets are held by an independent external custodian.

The concessional framework reflects an important distinction in the structure of managed investment schemes, where scheme assets are held by an independent external custodian rather than on the balance sheet of the responsible entity. In these circumstances, given that custodians are entities of substance, the risks that the NTA requirement is intended to address are reduced, particularly in relation to the custody and safeguarding of assets.

Maintaining a concessional framework avoids duplication of capital requirements across different parts of the structure and ensures that the financial resource requirements remain appropriately targeted to the risks borne by the responsible entity.

The FSC also considers that the concessional framework supports competition and diversity in the market, including by facilitating the use of third-party custodial arrangements and reducing unnecessary barriers to entry for responsible entities that do not assume direct custody risk (for example, because it is unreasonably costly or impractical for a responsible entity to provide a custodial or depository service).

The concessional framework should operate alongside broader regulatory settings, including governance, compliance and supervisory oversight, to ensure risks are appropriately managed.

C1Q2 Are there any aspects of the concessional NTA requirement that you think we should change? If so, please provide details about what you think should be changed and your preliminary views about how the change could be achieved.

The FSC considers that the concessional NTA framework remains broadly appropriate and should be retained.

There may be merit in targeted refinements to ensure that the framework continues to operate effectively over time. This could include:

- updating thresholds to reflect changes in the operating environment, consistent with the approach outlined in Options 1 and 2; and
- ensuring that the conditions for accessing the concessional framework remain clear and robust, particularly in relation to custody arrangements.

However, the FSC does not support removal of the concessional framework or changes that would materially increase capital requirements where custody risk is already mitigated.

This approach is consistent with the broader objective of ensuring NTA requirements remain proportionate, targeted and aligned to the risks borne by the responsible entity.

RECOMMENDATION 13

ASIC retain the concessional NTA framework where scheme assets are held by an independent custodian.

NTA requirements for other AFS licensees

Proposed changes to the NTA requirements for IDPS operators and corporate directors of retail CCIVs

The FSC supports ensuring that NTA requirements are applied in a consistent and coherent manner across comparable activities, to maintain a level playing field and avoid regulatory arbitrage.

At the same time, requirements should remain proportionate to the role performed and the risks assumed. IDPS operators operate under different business models and risk profiles compared to responsible entities, and this should be reflected in the calibration of any requirements.

Where an entity performs multiple regulated functions, consideration should be given to how requirements apply in practice. In particular, requirements should not duplicate or layer capital obligations in a way that overstates the underlying risk. Consistent with the current approach in

ASIC Instrument 2023/647, the same amount of NTA should apply to the aggregate of assets across various functions such as acting as RE, corporate director of a CCIV and operator of an IDPS.

Any changes should remain simple, clearly defined and operationally workable, to minimise compliance burden and support consistent application across the sector.

RECOMMENDATION 14

ASIC to ensure that where an entity performs multiple regulated functions, NTA requirements are applied in a manner that does not duplicate or layer capital obligations and allows the same capital to satisfy multiple requirements where appropriate.

Seeking feedback on imposing NTA requirements on AFS licensees that currently do not have requirements

D3Q1 Should we impose an NTA requirement on other categories of AFS licensees or should we maintain the status quo? Please give reasons.

The Consultation Paper highlights examples of certain AFS licensees as falling into this category, including: managed discretionary account (MDA) providers, operators of unregistered MISs (unless they are also a licensed custodial or depository service provider), issuers of non-cash payment facilities, financial advice licensees and crowd-sourced funding (CSF) intermediaries. The FSC confines its response in this section largely to MDA providers.

We consider that it is appropriate for ASIC to explore the introduction of NTA requirements for MDA providers which currently do not have to meet an NTA requirement. Although MDA providers are given power to implement investment decisions based on advice given to clients of their service, they do not hold client funds and so are closer in risk level to investment advisers than to REs or custodians. Given the growth in scale and importance of this segment of the market we believe that an entry or baseline level NTA requirement (however calculated) would be appropriate.

The FSC considers that there is an increasing expectation that providers operating discretionary models demonstrate an appropriate level of financial resilience where that does not already currently exist. This will align MDA providers more closely with comparable parts of the investment value chain and support the professionalisation of this important part of the sector.

The FSC does not propose a specific NTA requirement or calculation at this point, however we suggest further consultation with industry considering the appropriate settings to deliver a calibrated but appropriate baseline financial buffer.

Separately, in considering financial advice AFSLs, the FSC notes that it has previously considered the role of capital resource requirements through its Advice Licensing Green Paper in the second half of 2025. Feedback from that process did not support the specific introduction of capital or NTA requirements for advice licensees, with stakeholders consistently noting that such requirements would not appropriately alleviate potential risk within the advice industry (where, for example, the costs of misconduct could significantly exceed the value of any minimum capital requirement), and would be unlikely to address the drivers of poor conduct observed among a small number of advice licensees.

While the FSC is therefore not proposing the introduction of NTA or minimum capital requirements for advice AFSLs at this time, the FSC continues to consider how best to uplift standards and operational resilience among advice licensees through its forthcoming White Paper on Advice Licensing. The White Paper may suggest that higher-risk conduct in the advice sector is more appropriately addressed through strengthened supervision, compliance and governance frameworks, rather than direct capital requirements whilst noting a review of the resourcing of industry supervision may be worth considering to appropriately calibrate this to observed risks.

RECOMMENDATION 15

ASIC to undertake further consultation with industry considering the appropriate settings to deliver a calibrated, appropriate NTA requirement as a baseline financial buffer for MDA providers.

The FSC welcomes the opportunity to further discuss the matters outlined in this submission and looks forward to discussing with you and your team in our upcoming meeting.

In the meantime, if you have any questions relating to our submission, please do not hesitate to reach out to Aidan on 0421 944 648 or by email (ajohnson@fsc.org.au).

Yours sincerely

Aidan Johnson
Policy Director
Investments and Funds Management